

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 16, 2012

Lyle W. Cayce
Clerk

No. 12-40240
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CRISTOBAL LEAL-PENA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:11-CR-1378-1

Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Cristobal Leal-Pena raises an argument that is foreclosed by *United States v. Betancourt*, 586 F.3d 303, 308-09 (5th Cir. 2009), which reaffirmed the holding in *United States v. Gamez-Gonzalez*, 319 F.3d 695, 700 (5th Cir. 2003), that knowledge of drug type and quantity is not an element of the offense under 21 U.S.C. § 841. Leal-Pena acknowledges that the argument is foreclosed but moves for summary disposition so that he can raise the issue in a petition for writ of *certiorari*. The

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 12-40240

motion for summary disposition is GRANTED, and the judgment of the district court is AFFIRMED.